REMARKS

Claims 41-53 are pending. By this amendment, claims 1-40 are cancelled without disclaimer and to be pursued in a later or related application. New claims 41-53 are added. No new matter is added.

As an initial matter, Applicants wish to thank Examiner Ruhl for withdrawing the restriction requirement, and examining all pending claims. Applicants further wish to thank Examiner Ruhl for pointing to an oversite by Applicants' representative in not filing an IDS for those documents cited in a PCT Search Report and/or cited by Applicants in the relevant Petition to Make Special. However, Applicants do wish to state that they considered the cited art irrelevant given the particular paragraphs that were cited and the particular arguments made. For example, neither reference (Realtor or Robbins) cited referred to a database of AVM values, and the motivation to combine provided by the Report was a naked conconclusory statement that neither passed the existing teaching-suggestion-motivation (TSM) standard or the later holdings of KSR v. Teleflex requiring that motivations to combine/modify be explicit. Additionally, the PCT Search Report misapplied the relevant law, e.g., applied a printed matter case to claims reciting computer readable mediums.

Pushing forward, Applicants wish to apologize to Examiner Ruhl for any inconvenience caused to him as he adopted prosecution of this Application.

The Office Action objects to claim 22 under 37 CFR 1.75. By this Amendment, claim 22 is cancelled thus making the objection moot. Applications therefore respectfully request withdrawal of the rejection.

The Office Action also objects to the disclosure due to a minor typographical error, namely, the inadvertent inclusion of the word "Property" in a title. As is clearly evident by the Examiner's own comments, the Examiner easily found and identified the application to which the instant application referenced both by the title and by the named inventors. In fact, Applicants point out that the Examiner has not identified a single application that might be

confused with Application 10/536,692, or any other likely candidate. Thus, it is apparent that despite any typographical error or other minor informality, Applicants have identified Application 10/536,692 with sufficient clarity within the meaning of 37 CFR 1.57. Therefore, appropriate amendment of the incorporation by reference statement cannot constitute or lead to the inclusion of new matter.

Issues Under 35 U.S.C. § 101

The Office Action rejects claims 9-14, 23-25, 27, 29, and 34-40 under 35 USC §101. As these claims are cancelled, the rejection is moot, and therefore Applicants respectfully request withdrawal of the rejection.

Issues Under 35 U.S.C. § 112, Second Paragraph

The Office Action rejects claims 3-5, 9-14, 23-26, 29, 30 and 34-40 under 35 U.S.C. § 112, second paragraph, claiming that the Examiner believes that "essential" subject matter is missing from the claim scope. More particularly, the Examiner believes that offer for sale values would be required to be in the database so that a differential value search may be performed. This rejection moot regarding the above-mentioned claims and traversed to the extent applicable to any new claim.

In particular, Applicants first point out that the Examiner has provided no argument or evidence to show why it is necessary to put offer for sale values in the same databases, but merely makes a conclusory statement unsupported by any facts.

Second, Applicants point out that offer for sale value data may exists in separate databases, e.g., an MLS database, or even be stored electronically in non-database form in order to perform a DVS operation. Given that the various claimed databases include some from of property identifiers (e.g., the "first field" of claim 42), then it is certainly feasible to use such identifiers as an index to the appropriate offer for sale data. While it may be certainly helpful to place offer for sale data in the same database, it is certainly not essential as an issue of fact to do so.

Accordingly, withdrawal of the rejection is respectfully requested.

The Claims are Directed to Patentable Subject Matter

In particular, Applicants assert that Foretich and Walker, individually or in combination, teaches or suggests one or more databases embedded within a number of computer-readable storage mediums, the one or more databases containing records on a plurality of residential properties in a first geographic region ... and a a query device coupled to the one or more databases and configured to perform a differential value search (DVS) on the one or more databases to produce a set of second properties, a differential value search (DVS) being a search based on a difference in value between a property's AVM value and an offer for sale value for the respective property.

Applicants assert that it would not have been obvious at the time of the invention to modify Foretich to teach or suggest query device configured to perform a differential value search (DVS).

As an initial matter, Applicants note the language of the Office Action on page 13 where paragraph [0162] discusses a database of stored values "*for later use*" and "*for use in later valuations or other processes*" and "*may be employed as comparables for later valuations as appropriate.*" The Office Action goes on to say that an "*AVM value is a type of data that a person of ordinary skill in the art is going to be concerned with*" and "*[a]nyone buying a house or giving out a financial loan for a house, is concerned with the value of the house itself (valuation/AVM).*"

Respectfully, while the Office Action goes on to proclaim that this as "*a matter of common sense*", the entire argument put forth by the Office Action is wrought with errors, including:

(1) The assertion that the claimed subject matter is but "common sense" is belied in that it has apparently escaped the notice of the real estate community for decades, and once presented to the real estate community by Applicants, was immediately recognized for its innovative approach.

(2) To Applicants knowledge, anyone buying a house doesn't need to access a database of AVMs, and generally only might use a single AVM – as is the business model of Verovalue and its competitors.

(3) To Applicants knowledge, anyone providing a loan does not need to access a database of valuations, but needs only to have a single valuation (AVM, appraisal or whatever)

generated. This practice is perfectly consistent with the teachings of Foretich, which provides a single valuation to the intended customer.

(4) As a matter of common sense, no person or lending body will ever rely on any valuation (AVM, appraisal or otherwise) that reflects anything but a current value of a property. Any valuation of any database of Foretich quickly loses any relevance as a legitimate indicator of current market value. Who, exactly, would rely on an appraisal more than six month old?

Regarding the Office Action's additional statement on pages 22-23 (quoting paragraph [0006] of Foretich) that "*[s]ince the loan-to-value ratio is of great significance to lenders in making loan decisions as well as in determining applicable loan programs and interest rates, it is almost always necessary for a property valuation to be undertaken in connection with the lending process*," {underlined emphasis added by Examiner} Applicants merely ask "where does this require a database of AVMs?" Does it make sense that a lending officer will ask for the most recent valuation available or rely upon a valuation made months or (much more likely) years earlier.

Further, Applicants assert that, contrary to the statements made that lending officers are concerned with an offer for sale price, lending officers are concerned with two values: (1) the intrinsic value of the property, and (2) the amount of the loan.

Respectfully, the Office Action has displayed a complete misunderstanding of what a "loan-to-value ratio" (LTV) is. An LTV is the relationship, expressed as a percentage, of the amount of money loaned to the appraised value of the real estate pledged as security for the loan. For example, an $85,000 loan on a $100,000 house would have an LTV of 85%.[1]

Applicants respectfully request that definitions of terms of art be reviewed and understood, such as "loan-to-value ratio," before developing rejections that rely on such terms of art.

Finally, with regard to the assertion made on page 15 re "*[o]ne of ordinary skill in the art who invests in real estate, such as those who "flip" homes, (fix them up and sell them for profit) is clearly going to be interested in properties that are offered for sale at a price below their AVM value*," **Applicants respectfully point out that this assertion reflects a statement made by Applicants' representative, Mr. Mathis, to Examiner Ruhl about Applicants' personal**

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[1] http://investordictionary.com/definition/loan-to-value+ratio.aspx

experience in real estate and the start of their decision to provide computer-based tools for the real estate industry. Using the Applicants' own personal experiences in order to justify a rejection clearly shows hindsight recognition, especially given that the Office Action has not bothered to show an independent source for this motivation. It is not particularly reasonable for the Examiner to use information provided to him by Applicants and then represent or tacitly imply that such information as within the knowledge of one of ordinary skill in the art.

Applicants further point out that "flipping properties" doesn't require someone to "fix them up" before reselling them (an issue not discussed between Mr. Mathis and Examiner Ruhl) and that AVM values are infamous for not taking into consideration things like property condition. See, The Big AVM Lie ("*AVMs base their value estimates without anyone ever evaluating the condition of your home or the condition of the comparable sales used to estimate your value.*").

Applicants next point to the Office Action's subsequent assertion (page 24) that "*[i]f you can buy a house for $200,000, that is really valued at $250,000, that may be a good purchase*" while outlandishly apparent on its face, actually says nothing more than what it says, i.e., nothing about the condition of a house or the accuracy of an AVM value. It also doesn't suggest searching a database of AVMs, but best suggests that a prospective buyer get an accurate appraisal of a property he's considering. Given that this assertion is made in reference to Foretich, which is neither directed to nor discusses the business strategies of flipping – and in fact doesn't once discuss "offers for sale – Applicants respectfully assert this assertion is apparently meaningless in the present context given that it doesn't help Foretich solve any of it problems.

Continuing, the USPTO has recently published obviousness guidelines with respect to KSR v. Teleflex. More specifically, the USPTO has stated *"[i]f the search of the prior art and the resolution of the Graham factual inquiries reveal that an obviousness rejection may be made using the familiar teaching-suggestion-motivation (TSM) rationale, then such a rejection using the TSM rationale can still be made. Although the Supreme Court in* KSR *cautioned against an overly rigid application of TSM,* ***it also recognized that TSM was one of a number of valid rationales that could be used to determine obviousness.***" {bolded emphasis added}

Applicants respectfully point out that the cited motivations provided by Examiner Ruhl are not to be found in the applied art, an easily proved misapplication of fact and/or not apparent to be connected with any particular problem appreciated by those skilled in the art.

Applicants again point first to page 14 (Foretich) for which the Office Action relies on paragraph [0006] regarding the loan-to-value ratio of a loan. As mentioned above, it is apparent that the Examiner has no understanding of this term of art as mortgage lenders are not concerned with the sale price of a house, but the amount of money borrowed against it. The Examiner inserts a large number of factual inaccuracies in the continuing text. For example, while the Examiner asserts that 'the loan value for the mortgage lender is essentially the "offer for sale" price', this is patently false as AVMs are usable for loans only when the loan-to-value ratio is low. **As the rejection is based upon a false premise, the rejection is *de facto* invalid and therefore there is no *prima facie* case of obviousness.**

Based on the Differences in Functionality, KSR Suggests that the Claimed Subject Matter is Nonobvious

As stated in the recently published KSR guidelines (Federal Register, Vol. 72, No. 195, page 57530), the USPTO has identified seven rationales that may be used to form a prima facie case of obviousness including: (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) ''Obvious to try''—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

As these guidelines are recently published, Applicants acknowledge that Examiner Ruhl would have had no chance to identify the particular approach taken, or adhere to any of the particular steps that the USPTO requires of its examiners to formulate rejections for each of the approaches.

However, Applicants do point out that Examiner Ruhl has not identified each and every feature in the claims.

Further, Applicants point out that none of the cited references discloses, or even remotely appreciates using a DVS search.

To the contrary, Applicants most respectfully point out that broad, open-ended statements about unnamed possible uses do not subsume specific functions of later-developed technology. For example, paragraph [0162] of Foretich, which states that its knowledge base "*can store various classes of information derived during the valuation process for use in later valuations or other processes*", distinctly defines but a single function. The text about "*other purposes*" cannot be reasonably stretched to include specific functionality of the present claims.

Double Patenting

Applicants assert that the new claims are not subject to the double-patenting rejections of the present Office Action and/or will make the proper disclaimers or amendments after notice of allowable subject matter.

Conclusion

Thus, the independent claims contain patentable subject matter. The dependent claims, in turn, are patentable by virtue of their dependency as well as for the additional features they recite. Accordingly, withdrawal of all rejections is respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited. Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is welcomed to contact the undersigned attorney at the below-listed number and address.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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